

THE HONORABLE BENJAMIN H. SETTLE

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

KYLIE STEELE,

Plaintiffs,

v.

**NATIONAL RAILROAD PASSENGER
CORPORATION, a/k/a AMTRAK, a
District of Columbia corporation; and,
DOES ONE THROUGH FIFTY,**

Defendants.

Case No. 3:19-cv-05553-BHS

**JOINT DISPUTED JURY
INSTRUCTIONS AND SPECIAL
VERDICT FORMS**

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1 PLAINTIFF'S PROPOSED INSTRUCTION NO. ____

2 MORTALITY TABLE

3 Kylie Steele is 28 years old. According to mortality tables, the average expectancy of life
4 of a female aged 28 years is 53.96 years. This one factor is not controlling, but should be
5 considered in connection with all the other evidence bearing on the same question, such as that
6 pertaining to the health, habits, and activity of the person whose life expectancy is in question.

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8 WPI 34.04 Mortality Table—Limitation on Use; Washington Insurance Commissioner's
9 (www.insurance.wa.gov.) – 2010 United States population mortality (as modified)
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1 Amtrak objects to this instruction and seeks to exclude it. Plaintiff's life expectancy is not
2 at issue in this case. Witnesses are prepared to opine as to their opinions on Plaintiff's work life
3 expectancy. No instruction to the jury is warranted.

4 Amtrak also objects to this instruction to the extent it deviates from the pattern instruction.
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PLAINTIFF'S PROPOSED INSTRUCTION NO. ____

DAMAGES—PROOF; MEASURES OF TYPES OF DAMAGES

It is the duty of the Court to instruct you about the measure of damages.

Amtrak has admitted it is liable for all damages caused by the derailment, and the Court has instructed you that the derailment caused Plaintiff's mild traumatic brain injury. Therefore, you must determine the Plaintiff's damages.

The plaintiff has the burden of proving damages by a preponderance of the evidence. Damages means the amount of money that will reasonably and fairly compensate the plaintiff for any injury you find was caused by the defendant. You should consider the following:

The nature and extent of the injuries;

The disability and loss of enjoyment of life experienced by Plaintiff in the past and that with reasonable probability will be experienced in the future;

The mental, physical, and emotional pain and suffering experienced by Plaintiff in the past and that with reasonable probability will be experienced in the future;

The reasonable value of necessary medical care, treatment, and services received to the present time;

The reasonable value of necessary medical care, treatment, and services that with reasonable probability will be required in the future;

The reasonable value of wages, earnings, earning capacity, salaries, employment, business opportunities, and/or employment opportunities lost up to the present time;

The reasonable value of wages, earnings, earning capacity, salaries, employment, business opportunities, and/or employment opportunities that with reasonable probability will be lost in the future;

1 The reasonable value of necessary household help, services other than medical, and
2 expenses required up to the present time;

3 The reasonable value of necessary household help, services other than medical, and
4 expenses that with reasonable probability will be required in the future.

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6 Ninth Cir. Pattern Jury Inst. No. 5.1; Ninth Cir. Pattern Jury Inst. No. 5.2 (as modified)
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1 Amtrak objects to this proposed jury instruction to the extent it deviates from the pattern
2 instruction.

3 Amtrak also objects because it has only admitted that it is liable for Plaintiff's
4 compensatory damages proximately caused by the derailment. The nature and extent of Plaintiff's
5 injuries and damages remain in dispute.

6 Amtrak also objects on the basis that Plaintiff has not yet proposed an instruction that the
7 derailment caused Plaintiff's mild traumatic brain injury.

8 Amtrak also objects on the basis that the parties have agreed that the "reasonable value of
9 necessary medical care, treatment, and services received to the present time," will not be presented
10 to the jury. Plaintiff herself has stated that she is not making a claim for out of pocket medical
11 expenses. See Dkt. 33, at 4:13-14 ("Plaintiff is not making any claim for past subrogated medical
12 expenses, or for past out-of-pocket medical expenses."). Furthermore, this Court has ruled in
13 Related Cases, the jury should be advised through an instruction that there is no claim for past
14 medical expenses. See Dkt. 43-1 (*Haque v. NRPC*, No. 3:19-cv-05417-BHS, Pretrial Transcript
15 6:5-19).

16 Amtrak also objects on the basis that because Plaintiff did not have a job at the time of the
17 derailment and has not attempted to find paying work since the derailment, an instruction regarding
18 the "reasonable value of wages, earnings, earning capacity, salaries, employment, business
19 opportunities, and/or employment opportunities lost up to the present time," is improper.

20 Amtrak also objects on the ground that there is no basis or claim for any lost "business
21 opportunities."
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1 Amtrak also objects on the ground that there is no evidence or basis for “household help,
2 services other than medical, and expenses required up to the present time” or “expenses that with
3 reasonable probability will be required in the future.”

PLAINTIFF'S PROPOSED INSTRUCTION NO. ____

DAMAGES ARISING IN THE FUTURE – DISCOUNT TO PRESENT CASH VALUE

Any award for future economic damages must be for the present cash value of those damages.

Noneconomic damages such as mental, physical, and emotional pain and suffering, disability, and loss of enjoyment of life, are not reduced to present cash value.

Present cash value means the sum of money needed now, which, when invested at a reasonable rate of return, will pay future damages at the times and in the amounts that you find the damages will be incurred or would have been received.

The rate of return to be applied in determining present cash value should be the interest that can reasonably be expected from safe investments that can be made by a person of ordinary prudence, who has ordinary financial experience and skill. You should also consider decreases in the value of money that may be caused by future inflation.

Ninth Cir. Pattern Jury Inst. No. 5.4 (as modified)

1 Amtrak objects to this instruction on the basis that it needlessly overstates the elements of
2 Plaintiff's claimed non-economic damages. The elements of non-economic damages are set forth
3 elsewhere in these instructions—further recitation risks confusing the jury and adds no value.

4 Amtrak also objects to the extent this instruction deviates from the pattern instruction.
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1 PLAINTIFF'S PROPOSED INSTRUCTION NO. ____

2 DAMAGES CLAIMED FOR INJURY, PAIN, DISABILITY,

3 DISFIGUREMENT, LOSS OF CAPACITY FOR ENJOYMENT OF LIFE

4 If you find for plaintiff you should compensate plaintiff for any bodily injury and any
5 resulting pain and suffering, disability, mental anguish, and loss of capacity for the enjoyment of
6 life experienced in the past and that you find from the evidence that the plaintiff is reasonably
7 certain to suffer in the future from the injury in question. No evidence of the value of such
8 intangible things as mental or physical pain and suffering has been or need be introduced.

9 In that respect it is not value you are trying to determine, but an amount that will fairly
10 compensate plaintiff for the damages plaintiff has suffered. There is no exact standard for fixing
11 the compensation to be awarded on account of such elements of damage. Any such award should
12 be fair and just in the light of the evidence.

13 3 Fed. Jury Prac. & Instr. § 128:02 (6th ed.)
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1 Amtrak objects to this instruction on the grounds that it is not a 9th Circuit or a Washington
2 instruction.

3 Amtrak also objects to this instruction as to the use of the term “disfigurement” and “mental
4 anguish.” Plaintiff has produced no evidence from any treater that she has a disfigurement or
5 suffers from “mental anguish,” nor has she disclosed an expert that could establish either claims.

6 Amtrak also objects to this instruction on the grounds that it is improper, duplicative, and
7 confusing and may provide Plaintiff with a double recovery.

DEFENDANT’S PROPOSED INSTRUCTION NO. ____

AMOUNTS IN JURY VERDICT NOT TAXABLE

The amounts that you award to Plaintiff in this case are not subject to federal income tax.

IRC § 104(a)(2); *Burlington N., Inc. v. Boxberger*, 529 F.2d 284, 297 (9th Cir. 1975); *Kennett v. Delta Airlines, Inc.*, 560 F.2d 456, 462, n.7 (1st Cir. 1977)

1 Plaintiff objects to this instruction. As set forth in Plaintiff's Motions *in Limine*, No. 8,
2 this is not a case where Plaintiff is projected to have an "extremely high income" on a yearly
3 basis, and therefore will not cause "injustice to a defendant from ignoring future taxes."
4 Therefore, there is no basis to give such an instruction in this matter. *Hinzman v. Palmanteer*, 81
5 Wash. 2d 327, 333-35, 501 P.2d 1228, 1233-33 (1972). *See also* 22 Am. Jur. 2d §§ 88, 128; 63
6 A.L.R.2d 1404.

7 Additionally, this proposed instruction does not provide a complete picture to the jury as
8 to the potential for taxability and the reason the recovery may be excluded from reporting as
9 income. *See* IRC § 61 (indicating that all amounts from any source are included in gross income
10 absent a specific exception). Further, the reason that the amount would potentially not be
11 reportable as income, and thus potentially not taxable, is that it is an amount that is intended, in
12 its entirety, to make Plaintiff whole from her losses suffered as a result of Defendant's
13 negligence, not to reward her or to result in what the IRS considers income to her. *See* IRS
14 Guidance on Taxability of Personal Injury Recoveries, [https://www.irs.gov/government-](https://www.irs.gov/government-entities/tax-implications-of-settlements-and-judgments)
15 [entities/tax-implications-of-settlements-and-judgments](https://www.irs.gov/government-entities/tax-implications-of-settlements-and-judgments) (accessed September 21, 2021); IRS
16 Guide on Tax Treatment of Settlements, <https://www.irs.gov/pub/irs-pdf/p4345.pdf> (accessed
17 September 21, 2021). A statement that an amount is not subject to tax is an interpretation of the
18 IRS guidance about exclusion of certain income and is not appropriate or complete as proposed
19 by Defendant.

PLAINTIFF'S PROPOSED INSTRUCTION NO. ____
STIPULATIONS OF FACT

The parties have agreed to certain facts [to be placed in evidence as Exhibit ____] [that will
be read to you]. You must therefore treat these facts as having been proved.

Source: Ninth Circuit Model Civil Jury Instruction 2.2.

1 Amtrak objects to the inclusion of this instruction and seeks to omit it to the extent it
2 differs from the agreed facts set forth in the parties' pretrial order.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

KYLIE STEELE,)	
)	
Plaintiff,)	Case No. 3:19-cv-05553-BHS
)	
v.)	PLAINTIFF KYLIE STEELE'S
)	PROPOSED SPECIAL VERDICT
NATIONAL RAILROAD PASSENGER)	FORM
CORPORATION, d/b/a AMTRAK,)	
)	
Defendant.)	

We, the jury, award Plaintiff Kylie Steele the following amounts in this matter:

- | | | |
|----|---|-----------|
| 1. | Damages for loss of wages and earnings in the past: | \$ _____. |
| 2. | Damages for loss of wages and earnings in the future and loss of future earning capacity: | \$ _____. |
| 3. | Damages for future Life-Care Plan expenses: | \$ _____. |
| 4. | Damages for pain and suffering and loss of enjoyment of life, both past and future: | \$ _____. |

Sign and return this verdict.

Dated: _____, 2021.

Foreman

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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT TACOMA

8 KYLIE STEELE,

9 Plaintiff,

10 v.

11 NATIONAL RAILROAD PASSENGER
CORPORATION, d/b/a AMTRAK,

12 Defendant.

Case No. 3:19-cv-05553-BHS

**DEFENDANT NATIONAL
RAILROAD PASSENGER
CORPORATION'S PROPOSED
SPECIAL VERDICT FORM**

13 We, the jury, award Plaintiff Kylie Steele the following amounts in this matter:

14 1. Past non-economic damages: \$ _____.

15 2. Future non-economic damages: \$ _____.

16 3. Past economic damages: \$ _____.

17 4. Future economic damages: \$ _____.

18 Total: \$ _____.

19
20 Sign and return this verdict.

21 Dated: _____, 2021.

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23 _____
Foreman

1 Dated: September 21, 2021

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